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THE ANTI-TRUST ACT OF ARKANSAS has been amended by an act of the Legislature of 1913, approved by the Governor on March 12th last. The principal changes made by the amendment are that the penalties of the act shall not apply unless the prohibited act is done within the state and the form of anti-trust affidavit does not cover any acts done outside of Arkansas in restraint of trade.

A FOREIGN CORPORATION ENGAGED IN INTERSTATE COMMERCE is "doing business" within the meaning of the California Statutes regulating foreign corporations, according to the opinion of the Court of Appeals, 1st District, an intermediate court of that state, in Charlton Silk Co. v. Blume, 16 Cal. Appellate Decisions 390. The plaintiff in this case "sent out traveling salesmen into California" who "solicited and received orders for merchandise and sent such orders to the plaintiff in Chicago and the goods so ordered were then shipped by plaintiff to its customers in California." Having failed to file a certified copy of its charter and appoint an agent for service of process, it was denied the right to maintain an action for debt, the attention of the court having been called to "no decision, state or federal, that holds these provisions repugnant to any constitutional inhibition."

DIRECTORS OF FOREIGN AND DOMESTIC MINING COMPANIES IN CALIFORNIA are required to cause to be made a monthly itemized account or balance sheet showing disbursements and receipts, indebtedness and liabilities incurred or existing, etc., and to post same in a conspicuous place in the office of the company. (Sec. 588 Civil Code.) Directors failing to comply with this requirement are liable to removal and an action for damages by complaining stockholders. (Sec. 590 Civil Code.) In Kinard v. Ward, 130 Pacific 1194, the court held that it was unnecessary to allege or show that the plaintiff suffered any actual damage by reason of such failure, in order to have an action to remove the directors.

DISSOLUTION OF CORPORATIONS IN CALIFORNIA is provided for by proceedings under Code of Civil Procedure, Sections 1227 et seq., by application to the court. Notwithstanding such provisions, however, the Supreme Court in Tognazzini v. Jordan, 130 Pacific 879, entered judgment on a writ of peremptory mandamus to the Secretary of State requiring him to file an amendment to a domestic charter under Sec. 362 of the Code, shortening the term of corporate existence and thus effecting dissolution in another manner than that specifically prescribed by statute.

AN IMPORTANT QUESTION IN CANADA is to what extent a provincial company may do business outside the province in which it is incorporated. The British North America Act, which might be termed the Constitution of Canada, assigns to the provinces exclusive authority to make laws regulating "the incorporation of companies with provincial objects" and to the Dominion government the power to incorporate companies with federal objects. Recently the Province of Alberta refused admission to a British Columbia company on the ground that its charter powers were too broad in that they authorized the company to do business throughout Canada and in other countries. (International Home Co. v. Registrar, Supreme Court of Alberta, 9 D. L. R. 297.)

THE RECENT CASE IN BRITISH COLUMBIA referred to in our Journal No. 38 was reversed by the Supreme Court of Canada, which held that the contract in question was completed by the delivery of the goods beyond the limits of the province, and the notes made in British Columbia by the defendant were only made in performance of his obligation to pay under that contract. No act was done by the plaintiffs within the province. The chief justice in his opinion says further: "If we had to deal with the sale of goods by the respondent (defendant) to a customer, then the question of carrying on business through an agent in the province might arise." The right of the province to impose conditions on a Dominion company transacting business therein was not a question before the court in this appeal. (John Deere Plow Company v. Agnew, April 7, 1913—not reported.)

AN ACTION BY A FOREIGN CORPORATION, in behalf of itself and other creditors, to set aside a fraudulent conveyance of real estate was sustained by the Supreme Court of Saskatchewan (Canada) notwithstanding a failure to register under the Foreign Companies Act, R. S. S. 1909, ch. 73. (Grocery Company v. Derrick, 10 D. L. R. 126.)

Brown, J., in answer to defence that the plaintiff company had failed to register and in consequence had no right to bring the action, held:

> "In view of the fact that they are not registered in this province they, of course, cannot do business in this province, but they are not seeking to do business when they bring this action. In seeking the relief which they now claim they are in no way violating any of the provisions of the Foreign Companies Act, and are therefore quite within their rights."

A SUBSCRIBER TO STOCK OF A CONNECTICUT CORPORATION may pay for his stock in property instead of cash, but if he takes the stock and fails or refuses to transfer the property, he must make good in cash. (In re Monarch Corporation, 203 Fed. 664.)

STOCK CERTIFICATES OF DELAWARE CORPORATIONS may now be signed by "the president or a vice-president, and either the treasurer or an assistant treasurer, or the secretary or an assistant secretary." (Senate Bill No. 97, L. 1913, approved Mar. 12, 1913.) Heretofore the statute required all such certificates to be signed by the president and treasurer. Another act (Senate Bill No. 95) validates all stock certificates heretofore issued which may have been signed by any of the officers first above named.

THE FRANCHISE TAX IN DELAWARE has formerly been due and payable on or before May 1. Sec. 5 of the Franchise Tax Law was amended by Senate Bill No. 91, approved March 19, 1913, so that hereafter, including the present year, the tax may be paid at any time on or before July 1st in each year. No change is made as to the time of filing the franchise tax return nor as to the rate of the tax. The tax bills for the year 1913 were made out on the printed forms used in prior years, showing May 1st as the date on which the tax was due. In most instances the old date was stricken out and the new one interlined.

THE AGENT FOR SERVICE OF PROCESS IN INDIANA required to be appointed by foreign corporations as a prerequisite to doing business in that state was held to be the proper person upon whom service could be made even after his appointment had been revoked and the foreign

corporation had formally withdrawn from the state, in an action on a contract made in the state while such corporation was "doing business" therein. (Brown-Ketcham Iron Works v. Geo. P. Swift Co., referred to in our Journal No. 38.) The defect in the Indiana law brought to attention by the above case has resulted in an amendment (Ch. 32, Laws of 1913, in effect May 1, 1913) by which foreign corporations are required to appoint the Auditor of State as agent for service of process in addition to an individual agent. The act provides, however, that service shall not be made upon the Auditor of State unless such foreign corporation has no officer or agent within the state upon whom service of process can be made. An affidavit of that fact having been filed with the clerk of the court in which the suit is pending against such corporation, process may be served upon the Auditor of State, who, in turn, under the act, sends it to the corporation by registered letter addressed to any officer previously designated. The act appears to require all foreign corporations which are now doing business in Indiana to forthwith appoint the Auditor by proper instrument.

"DOING BUSINESS" IN KENTUCKY. A foreign corporation merely collecting its debt against a resident of that state or taking a mortgage to secure it is not doing business within the meaning of Section 571 of the Kentucky statutes, so as to require it to appoint an agent to accept service of process. (Ichenhauser Co. v. Landrum's Assignee, 155 S. W. 738.)

FAILURE TO FILE A STATEMENT SHOWING THE LOCATION OF ITS OFFICE or offices and the name or names of its agent or agents thereat upon whom process can be served is a misdemeanor on the part of any corporation, domestic or foreign, doing business in Kentucky. The penalty is a fine of from $100 to $1,000. In Commonwealth v. O'Bryan, Utley & Co., 155 S. W. 1126, the Court of Appeals of that state held that evidence of having mailed such statement to the Secretary of State is not competent proof of the filing, if unaccompanied by other evidence of its actual receipt.

THE RIGHT OF A CORPORATION TO HOLD REAL ESTATE IN KENTUCKY is limited, under penalty of escheat, to five years, except such as may be necessary to carry on its business. This provision, says the Court of Appeals of that state, was intended to prevent railroads or other corporations from buying up large and valuable tracts of land, not for any use connected with their business, but for speculative purposes. It will not prevent a corporation from taking title to property and holding it for a longer period than five years, if it can show that the property is needed for future use in the proper, fair and legitimate conduct of its business. (Commonwealth v. Mengel Box Co., 153 S. W. 771.)

SERVICE IN KENTUCKY ON THE AGENT OF A KENTUCKY SUBSIDIARY company of the Postal Telegraph Cable Company of New York was held sufficient to bring into the jurisdiction of the Kentucky courts another subsidiary company of the company organized under the laws of the State of Tennessee. It appeared that the directors of the parent corporation were also the directors of the Tennessee and Kentucky companies and that the parent company owned all of the stock of these companies. The action was for damages against the two subsidiary companies, treating them as one. Hobson, C. J., delivered the opinion of the court:

"We conclude that the facts here are practically the same as in Southern Ry. of Ky. v. Thomas, 90 S. W. 1043, and that the Circuit Court did not err in holding that the Kentucky corporation and the Tennessee corporation were simply another name for the parent corporation in New York and in treating the two corporations as one defendant."

THE FOREIGN CORPORATION LAW OF MICHIGAN prescribing the terms and conditions on which foreign corporations may be admitted to do business in Michigan has been amended (Laws 1913, House Bill 689, in effect August 15, 1913) to require the franchise fee to be paid upon the entire authorized capital stock in case a foreign corporation has not at the time of application for admission, carried on business at least six months outside of Michigan. Otherwise the franchise fee is payable only on the proportion of authorized capital stock represented by tangible property owned and used in Michigan. Heretofore the proportion has been based on the amount of "property owned and used and business transacted" in Michigan.

A FOREIGN CORPORATION APPOINTING AN AGENT IN MISSOURI to whom goods are shipped on consignment and sold on commission is "doing business" and the contract of agency is void if entered into before the corporation has procured authority to do business. The corporation, therefore, cannot maintain an action on the contract, but it appears that if the agent wrongfully retains possession of goods owned by the corporation it may prosecute an action in replevin or trover for the recovery of the property or of its value, regardless of its failure to procure authority to do business. (Farrand Co. v. Walker, 155 S. W. 68.)

THE LIABILITY OF HOLDERS OF STOCK ISSUED AS A BONUS cannot be enforced in Missouri by a bondholder where he had full knowledge at the time the bonds were acquired that the stock had been so issued. This was so held in Biggs v. Westen et al., 154 S. W. 708, by Bond, J., who said:

"The law is well settled in this state that no creditor of a corporation, who becomes such with knowledge that its stock, though purporting to have been paid in full, was in point of fact neither paid nor to be paid, but was issued merely as a bonus for the subscription and payment for other stock, can enforce his claim against the corporation by compelling its shareholders to pay to the corporation, its trustees or other representative, any portion of the stock so donated."

NO PERSON WITHIN NEBRASKA MAY REPRESENT A FOREIGN CORPORATION in the sale of its products, nor sell such products on the warranties, guarantees and advertising matter prepared and circulated by such corporation, until the corporation has complied with the foreign corporation laws of the state. A fine of not exceeding $1,000 and imprisonment not exceeding three months, or both, may be imposed upon any person violating the law by so acting for an unregistered foreign corporation. (Senate Bill No. 440, approved April 11, 1913, in effect at once.)

AN AMENDMENT TO THE CORPORATION LAWS OF NEVADA increases the minimum amount of fee to be paid upon filing certificates of incorporation from $10 to $25. The rate remains as heretofore, namely, ten cents for each $1,000 of authorized capital stock.

A NEW JERSEY ACT TO PREVENT UNFAIR COMPETITION, taking effect April 1, 1913, and constituting Ch. 210 of the Laws of 1913, reads as follows:

"1. It shall be unlawful for any merchant, firm or corporation, for the purpose of attracting trade for other goods, to appropriate for his or their own ends a name, brand, trade-mark, reputation or good will of any maker in whose product said merchant, firm or corporation deals, or to discriminate against the same, by depreciating the value of such products in the public mind, or by misrepresentation as to value or quality, or by price inducement, or by unfair discrimination between buyers, or in any other manner whatsoever, except in cases where said goods do not carry any notice prohibiting such practice, and excepting in case of a receiver's sale, or a sale by a concern going out of business.

"2. Any person, firm or corporation violating this act shall be liable at the suit of the maker of such branded or trade-marked goods, or any other injured person, to an injunction against such practices, and shall be liable in such suit for all damages directly or indirectly caused to the maker by such practices, which said damages may be increased threefold, in the discretion of the court."

A comparison of this act with the recently enacted Anti-Trust Law, Ch. 13, Laws of 1913 (see our Journal No. 37), seems to indicate a deviation from the rigid provisions of the former act on the question of price fixing.

A FOREIGN CORPORATION SUED IN NEW YORK (Amer. Ink Co. v. Riegal Sack Co., 140 N. Y., Supp. 107) set up two counterclaims to the action: one arising out of the action sued on, the other on an independent transaction. The defendant had failed to comply with Section 65 of the General Corporation Law (Consol. Laws 1909, ch. 23) in which it is provided that no foreign corporation doing business in the state "shall maintain any action in this state on any contract made by it in this state" before obtaining a certificate of authority as therein provided; and it had also failed to "comply with Section 181 (Consol. Laws 1909, ch. 60) of the Tax Law, which provides that a foreign corporation engaged in business in this state failing to pay a license tax is expressly denied the process of the courts by these words, "No action shall be maintained or recovery had."

Gerard, J., in discussing the defense under the General Corporation Laws, said:

"The court below correctly sustained defendant's demurrer on the ground that Sec. 15 of the General Corporations Law did not prevent a foreign corporation from recovering upon a counterclaim arising out of the transaction upon which the plaintiff sues on the authority of Alsing v. New England Quartz Co., 66 App. Div. 473, affirmed in 174 N. Y. 536, as this case expressly held that section 15 did not prevent a foreign corporation when sued from recovering on a counterclaim arising out of the transaction that had been made the basis of plaintiff's complaint."

In discussing the provision of the Tax Law the court continued:

"The language of Section 181 of the Tax Law has been construed in no case in New York, except in the Alsing case above. It seems to me that the words 'or recovery had' used in addition to the words 'no action shall be maintained' makes it plain that the Legislature intended that the corporation which had not complied with Section 181 of the Tax Law should be entitled to obtain no relief in the courts of this

state, either as plaintiff or as defendant alleging a counter-claim, and this whether the counter-claim arose out of the contract on which plaintiff sues or not."

A CONTRACT UNENFORCEABLE IN NEW YORK, because entered into by a foreign corporation in that state before obtaining a certificate of authority to do business, may be enforced in a sister state. In South Bay v. Merrill, 86 Atl. 351, the New Hampshire court held that since the New York statute simply deprives the foreign corporation of a remedy to enforce the contract in the state of New York and does not affect the validity of the contract itself, the contract may be enforced in any other state where jurisdiction of the parties can be obtained.

CORPORATE NAMES IN NEW YORK. It has been the practice of the Secretary of State to reject certificates of incorporation presented for filing under names not wholly in the English language. The Attorney General recently held that under the law as it then stood coined words and foreign derivatives if not in accepted use, and phrases from other languages should be excluded absolutely from corporate titles. In order to remedy this strict rule the law has been amended (Ch. 479, L. 1913) so that nothing therein "shall be deemed to prohibit a corporation from having and using a corporate name or title in a language other than the English language if the same be in English letters or characters."

Ch. 454, L. 1913, prohibits the use of the word "co-operative" or any other derivative of the term "co-operative," as part of the corporate name of any company not organized under the provisions applicable to co-operative companies as contained in that chapter.

SURPLUS INVESTED IN REAL ESTATE BY A NEW YORK CORPORATION incorporated for purposes other than dealing in realty was held to be subject to the Tax Law (Consol. Laws 1909, c. 60), Section 182, providing for a franchise tax based upon the amount of its **capital stock employed** within the state during the preceding year.

Lyon, J., in People ex rel. v. Sohmer, 140 N. Y. Supp. 507, held:

> The relator was exercising its franchise and doing business as well as employing its assets within the intent of the statute in holding title of the 230-acre tract, which the secretary of the relator testified was bought by it for an investment. . . . The relator was in effect acting in the capacity of a corporation organized for the purpose of dealing in real estate. In such a case the capital stock must be held to be employed rather than invested. . . . Using is employing.

As to a distinction between land purchased from stock subscriptions and that purchased wholly out of profits the court continued:

> While the statute makes the basis of taxation the amount of **capital stock** employed, the words "capital stock" and "capital" are practically the equivalent of each other when considered as a basis for a franchise tax. . . . By the value of its capital stock is meant the value of its net assets. . . . The surplus is part of the capital and must necessarily be taken into consideration in estimating the capital.

AN IMPORTANT NOTICE TO CORPORATIONS IN NEW YORK. The Stock Transfer Tax Law is amended in several material respects by Chapter 779 of the Laws of 1913, which goes into effect July 1, 1913. A new requirement which should receive the careful attention of all corporations is contained in a section added to Chapter 60 of the Consolidated Laws, and

known as Section 275a. This section provides for the registration with the State Comptroller within ten days after July 1, 1913, of every person, firm or corporation concerned with the transfer of stock in the State of New York. It applies to two classes: First, those engaged, in whole or in part, in conducting a stock brokerage business, or in making sales, agreements to sell, deliveries or transfers of stock, and second, every corporation keeping a place in the state for the sale, transfer or delivery of its own stock. Failure so to register is a misdemeanor punishable by fine or imprisonment, or both. Printed forms for use in registering are being prepared by the State Comptroller. Persons, firms or corporations coming within the provisions of this law after July 1 must register within ten days after beginning business as brokers, etc., or establishing a place for the sale or transfer of stock.

Section 270 of the law, relating to the rate of tax, is amended to provide that, in the case of transfers of shares without par value, the rate of tax shall be $.02 for each share of stock. On shares having a par value, the rate remains as heretofore, $.02 on each $100.00 of face value or fraction thereof. When the transfer tax stamps are affixed to bills or memoranda of sale, such bills or memoranda shall be numbered and entered in the book of account required by Section 276. The last named section as amended provides, among other things, that the evidence of payment of a tax shall be provided in one of the following manners, and not otherwise:

(a) By attaching the transfer tax stamps to the certificate surrendered for transfer, or

(b) If the stamps are attached to the bill or memorandum of sale affecting the transfer, by attaching such bill or memorandum to the surrendered certificate, or

(c) If the stamps on the bill or memorandum affect the transfer of one or more certificates, a notation must be made upon such certificates, bill or memorandum as the case may be, clearly specifying and identifying the certificate or certificates of stock, or

(d) If the bill or memorandum bearing such stamps is not attached to the surrendered certificate, a notation must be made upon the bill or memorandum stating the number of the certificate to which the bill or memorandum applies.

THE ANNUAL LICENSE FEE IN OREGON imposed by Section 6707 of Lord's Oregon Laws has been declared unconstitutional and void by the Supreme Court of that state in so far as it applies to foreign corporations, on the ground that it imposes a tax upon the whole capital stock irrespective of whether it is employed in the state. (Hirschfeld v. McCullagh, 130 Pac. 1131.) The court holds, however, that the fact that the requirement to pay a license fee is void does not render void the requirement that the corporation file the annual report or appoint an agent for service of process. While the validity of the license fee was before the court, the Legislature, perhaps foreseeing the result, passed a new license tax act requiring all foreign corporations, except insurance, casualty and surety companies, to pay an annual license fee of $100. This act went into effect June 3, 1913.

THE RIGHT TO SUE ON A CONTRACT entered into before obtaining authority to do business in Oregon seems heretofore to have been denied to foreign corporations in that state, but in the Hirschfeld case, referred to above, the court seems to overrule the decision in Bank of

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British Columbia v. Page, 6 Or. 431, and to hold that the right is not lost but merely suspended until such time as the corporation does comply with the law.

THE CAPITAL STOCK TAX IN PENNSYLVANIA is not imposed on that part of the capital stock of a manufacturing company "which is invested in and actually and exclusively employed in carrying on manufacturing." In Commonwealth v. Custer City Chemical Company, 16 Dauphin County (Penna.), Reporter 46, it was held that capital invested in raw material was not exempt from taxation where the investment consisted in an outlay sufficient to supply the company for its manufacturing purposes for six years. Kunkel, P. J., in delivering the opinion, said:

> "To receive relief from the tax on its capital stock the burden is on the defendant to clearly show its right to the exemption. . . . The capital stock for which it claims the exemption was represented by timber . . . in a quantity sufficient to supply its future needs for six years. It cannot therefore be said to have been **actually employed in carrying on manufacturing.** The right to the timber may be disposed of by the defendant and it may never be used or employed at all in manufacturing. The time may come when the capital thus invested will be exempt. That time will be when it is actually employed in carrying on manufacturing."

In another case (Comm. v. Consolidated Dressed Beef Co., 16 Dauphin County Reporter, 79) it was held that the dressing of meat for the market was not manufacturing so as to entitle the defendant to exemption from the capital stock tax.

BONUS TAX ON INCREASE OF CAPITAL STOCK IN PENNSYLVANIA must be paid by domestic corporations, but a deduction will be allowed on the proportionate part of the increase as is represented by the capital stock of a corporation whose franchises, rights and property were purchased at a judicial sale. In Commonwealth v. The Matheson Automobile Co., 16 Dauphin County Reporter (Penna.), page 14, on appeal from settlement of bonus due the Commonwealth, Kunkel, P. J., said:

> "By the purchase the defendant company succeeded to the franchises and property of the . . . company, among which was the right to have and use a capital stock of $1,100,000. The Commonwealth had already received the bonus in that amount of capital stock . . . and there is no just reason why it should receive it again. Indeed, it would be most inequitable on its part, after having authorized the sale of the right (Act Apr. 17, 1876, P. L. 37, Sec. 5), to deny to the purchasing corporation the benefit of its purchase by exacting the bonus from it also."

AN UNREGISTERED FOREIGN CORPORATION IN TEXAS contracting to adjust a claim against a domestic creditor may avail itself of the process of the courts of the State of Texas to enforce the contract though it be made and its performance is contemplated in the state. This principle was so announced in Jackson Woolen Mills v. Moore, 154 S. W. 642, where Willson, C. J., said in discussing the provision in the State Law (Rev. Civ. St. 1911, Art. 1318), which denies to a foreign corporation a right to maintain a suit in the courts of this state upon any demand, unless it has filed its articles of incorporation for the purpose of procuring a permit to transact business in this state:

"The purpose of the statute was probably twofold: one to protect the people of the state from irresponsible foreign corporations by affording the means by which they could readily ascertain such reference to them as is ordinarily afforded by their charters; the other to place them upon the same footing as like domestic corporations by requiring them to pay a like fee for a permit to do business. . . . It is to be presumed, therefore, that the business had in view in making the requirement was the ordinary business of the company. Had it been intended to prohibit a foreign corporation from collecting, extending, adjusting or bringing suit for a debt contracted elsewhere, it would have been easy to make that intention plain."

A NOTE GIVEN IN PAYMENT FOR STOCK is void in Texas and uncollectible in the hands of one who takes it from the corporation with notice. In Mason v. First Nat'l Bank, etc., 156 S. W. 366, the Court of Civil Appeals of that state held that since the Constitution, Art. 12, Sec. 6, provides that no stock shall be issued "except for money paid, labor done, or property actually received," the issuance of stock for a note was contrary to law, and being so, was no consideration for a promise to pay. The note was neither money paid nor property within the meaning of the constitutional provision.

CHANGING THE PRINCIPAL PLACE OF BUSINESS OF A WASHINGTON CORPORATION from one county to another in that state is governed by Sec. 3708½ Rem. & Bal. Code, which requires that a certified copy of the certificate of incorporation shall be filed in the county to which removal is made. In construing this provision the Supreme Court of Washington has held that the certificate of incorporation must first be amended so as to designate the new location of the principal place of business and then certified in triplicate and filed as in the case of original articles. (First Nat'l Bank v. Wilcox, 131 Pac. 203.)

STOCKHOLDERS IN WISCONSIN CORPORATIONS ARE PERSONALLY LIABLE under Section 1773, Statutes 1911, for obligations incurred with their authority or consent before at least one-half of its capital stock is subscribed and at least 20 per cent. thereof paid in. In Zwietusch v. Becker et al., 140 N. W. 1056, an action was brought against defendant individually for default by a corporation (due to bankruptcy) as assignee of a leasehold interest. The complaint alleged that the required amount of stock had not been subscribed, that the required percentage had not been paid in and that defendant consented to the acceptance of the assignment of the lease to the corporation. To this defendant demurred. Winslow, C. J., held:

"If the acceptance of the assignment and the assumption of the obligations of the lease constituted the incurring of an obligation to the lessors, then it is quite clear that the statute was violated, and that the signers of the articles became personally liable to carry out such obligations. A valid contract made by one person for the benefit of another may be at once enforced by that other, regardless of formal assent thereto prior to the commencement of the action. Upon the allegations of the complaint the appellant was bound to carry out the obligations of the lease just as fully as the corporation was, and hence the complaint states a good cause of action."

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THE BAUER CHEMICAL COMPANY CASE is the latest of a series of cases before the Supreme Court of the United States involving the question of fixing prices at which goods shall be sold by jobbers and retailers. This decision settles definitely that a patentee cannot fix or control prices of a patented article upon resale. In this case reliance was placed on the decision in the case of Henry v. Dick Co., 224 U. S. 1. The court distinguishes the two cases by reasoning that in the "Dick Case" the article was sold for less than value with a license restriction that it might only be used with supplies made by the Dick Company, the patentee depending upon the sales of such supplies for the profit to be realized on the invention. A qualified title only passed to the vendee and the article itself remained within the limit of the patent monopoly, thereby permitting the owner of the patent still to dictate the manner of its use. In the present case, the article was sold outright to the jobber by the owner of the patent, who had no interest in the proceeds of the subsequent sales, no right to any royalty thereon or to participation in the profits thereof. The packages were sold with a full and complete title, they passed outside the limit of the patent monoply, the right to vend conferred by the patent law had been exercised and the attempt to fix the price on resale by others is beyond the protection and purpose of the patent law. The packages contained a notice that the article was licensed "for sale and use at a price not less than one dollar" and that "a purchase is an acceptance of this condition," but the court found the transaction to be in fact a sale and to call it "a license to use" was a perversion of terms—a mere play upon words. (Bauer & Cie and The Bauer Chemical Company v. James O'Donnell, decided May 26, 1913, not yet reported.)

THE PRINCIPLE THAT CORPORATIONS LEASING THE ENTIRE CORPORATE PROPERTY ARE NOT "ENGAGED IN BUSINESS" within the meaning of "The Corporation Tax Law" (Act of August 5, 1909, Sec. 38; 36 Stat., Ch. 6, p. 11, 112-117) was affirmed in McCoach v. Minehill & Schuylkill R. R. Co., 33 Supreme Court Rep. 419.

Mr. Justice Pitney delivered the opinion of the court and in part said in quoting a prior decision:

> "The Corporation Tax Law of 1909 does not impose direct taxation upon property solely because of its ownership, but the tax is within the class which Congress is authorized to lay and collect under Art. 1, Sec. 8, Cl. 1 of the Constitution." . . .

and continuing the court held:

> "From the facts as stated above it is entirely clear that the Minehill Company was not during the years of 1909 and 1910 engaged at all in the business of maintaining or operating a railroad, which was the prime object of its incorporation. This business, by the lease of 1896, it had turned over to the Reading Company. . . . And it is the Reading Company, and not the Minehill Company, that is **doing business** as a railroad company upon the lines covered by the lease and is taxable because of it. The Corporation Tax Law does not contemplate double taxation in respect of the same business."

To the argument of the Government that the Reading Company had deducted the rentals from its gross income and thus both the lessor and lessee might escape taxation on such rental, the court replied:

> "But an examination of the act shows that this is the precise result intended by Congress."

and in support of this statement quotes a paragraph of the act which reads:

"Net income shall be ascertained by deducting from the gross amount of the income . . . all the ordinary and necessary expenses paid within the year out of income in the maintenance of its business and properties, including all charges **such as rentals** or franchise payments."

The statement of the court that the present law does not contemplate double taxation in respect of the same business will scarcely hold true as to the proposed new income tax law which, for one thing, will not permit deduction of income received from dividends of corporations which in turn are subject to the tax.

THE ATTORNEY-GENERAL OF THE UNITED STATES filed a petition for rehearing of the above case alleging, inter alia, that a large amount of revenue collected from corporations receiving an income from leasing companies will have to be refunded and that future taxation of such corporations under the act is precluded.

The attorney-general urged on the attention of the court the case of Flint v. Stone Tracy Co., 220 U. S. 107, where it was held that the doing of **any** business and the income from **every** source was subject to the corporation tax. He pointed out that the Minehill Company was doing business and receiving income from certain sources in that it held stockholders' meetings and elected officers; declared dividends; collected rentals and revenue from other sources, and reinvested such income; paid taxes; maintained offices with clerical force, etc.; and that it preserved its corporate franchises and corporate existence, thus giving it the right at any time to exercise certain corporate functions, including the right of eminent domain.

It was also argued that the court was in error in assuming that the government sought to tax both corporations "in respect to transporting the same freight and the same passengers," since the lessee company by the decision itself and the express terms of the act was exempt from the tax to the extent of rentals paid.

The court refused to disturb the judgment.

TAX LIENS IN FAVOR OF THE UNITED STATES are invalid against mortgagees, purchasers or judgment creditors until notice of such lien shall be filed by the collector (Internal Revenue) in the office of the clerk of the District Court within which the property subject to lien is situated; and further, whenever any state authorizes the filing of such notice in the office of the registrar or recorder of deeds the lien of the tax is likewise invalid as to such mortgagees, purchasers or judgment creditors until the notice is so filed. (Act March 4, 1913, amending Section 3186 of the Revised Statutes of the United States.)

In a circular letter of instructions to collectors of internal revenue, dated March 18, 1913, the Commissioner of Internal Revenue instructs collectors to file notice of lien in all cases of assessment now outstanding or hereafter made where the collector apprehends that attempt will be made to defeat collection by transfer of property or placing encumbrance thereon, or where from the size of the assessment or for any other reason the collector is of the opinion that such action is advisable to protect the government.

When the tax has been paid, the instructions add, notice should in like manner be filed, showing satisfaction of the claim and removal of lien.

SET-OFF UNDER FEDERAL BANKRUPTCY LAWS CLAIMED BY A CREDITOR-STOCKHOLDER was disallowed in Kiskadden v. Steinle, 203 Fed. Rep. 375, where the stockholder was indebted to an insolvent Ohio corporation for an unpaid balance found due on his stock-subscription.

Sec. 68a of the Bankruptcy Act of July 1, 1898, c. 541, reads:

"In mutual debts or mutual credits between the estate of a bankrupt and a creditor, the account shall be stated, and one debt shall be set off against the other and the balance only shall be allowed or paid."

Warrington, Circuit Judge, discussing this provision, held:

"We think the true interpretation of Section 68, cls. 'a' and 'b' and of such rule is that after the corporation becomes insolvent, any sum due upon a stock subscription is impressed with the character of a trust in favor of all creditors alike, except only such as may have given credit to the company with knowledge of the scheme of stock issue. Hence to apply such an unpaid subscription as a set-off to an ordinary claim held by the subscriber against the corporation would be to appropriate the rights of the other creditors in the subscription debt to the exclusive benefit of the person owning it. It cannot be said, then, that the debts in question are in their nature both mutual and in the same right."

MINORITY STOCKHOLDERS ATTACKING A SALE OF CORPORATE ASSETS must apply promptly for rescission. In Marks v. Merrill Paper Co., 203 Federal Rep. 16 (C. C. A. 7th Circuit), a delay of nearly a year was held a bar to relief in equity, particularly where there was no evidence of fraud in the sale and the rights of innocent bondholders and other creditors had intervened.

SO CALLED "BLUE SKY" LAWS, providing for the regulation and supervision of investment companies, have been passed this year by the legislative assemblies of twenty-one states, in two of which the bills failed to become law owing to the governors' exercise of their veto powers, while in another the measure awaits the governor's signature. In Kansas, the law of 1911, after which this class of legislation is patterned, was amended in many respects. Bills are also pending in five of the state legislatures in session at the present time, and a proposed act known as the "National Blue Sky Law" is under consideration in the lower house of Congress. Our Legislative Department is prepared to furnish reports on and copies of all pending and enacted legislation.

FOREIGN CORPORATIONS have received no little attention at the hands of legislators during the 1913 sessions in forty-one states. New Hampshire has passed a foreign corporation law which goes into effect July 1, 1913. Several states have amended their laws relating to reports and a number of new reports will hereafter be required. Tax rates have been changed and new taxes imposed. The constantly changing laws relating to foreign corporations make it practically impossible for corporation counsel to comply with all legal requirements and avoid penalties without the assistance of an organization, such as The Corporation Trust Company, devoting constant effort to keep in touch with laws and regulations in every state. Our service to attorneys for foreign corporations includes attention to the details of taking out licenses to do business, furnishing an agent upon whom process may be served, notification of the times at which reports must be filed, taxes paid or other steps taken to fully comply with the law, and information as to changes in the law or the enactment of new laws affecting such foreign corporations. The service is rendered for a nominal fee, payable annually.

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